

## **REMARKS**

The Final Office Action, mailed February 20, 2007, considered claims 1–36 and 41–44. Claim 43 was subject to restriction under 35 U.S.C. § 121. Claims 1–36, 41–42, and 44 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1–36, 41–42, and 44 were rejected under 35 U.S.C. § 102(e) as being anticipated by Lovy et al., U.S. Patent No. 7,028,228 (filed Mar. 28, 2002) (hereinafter Lovy). Claims 1, 9–10, and 36 were rejected under 35 U.S.C. § 102(e) as being anticipated by Desai, U.S. Patent No. 6,968,291 (filed Nov. 4, 2003) (hereinafter Desai).<sup>1</sup>

By this response, claims 1, 10, and 12 are amended and claims 11 and 43–44 are cancelled such that claims 1–36 and 41–42 remain pending. Claims 1 and 10 are the independent system and method claims which remain at issue and claim 9 is directed to a corresponding computer program product. Support for the amendments may be found throughout the Application, including the disclosure found within Specification ¶¶ 5–7 and 26–38.<sup>2</sup>

Claim 43 was subject to restriction under 35 U.S.C. § 121. Claims 43–44 have been cancelled due to the restriction requirement but Applicants reserve the right to pursue the cancelled material at some later date and such cancellation should not evince any intent to surrender any subject matter or scope.

As reflected in the claims, the present invention is generally directed toward embodiments for providing a health model for software components. Claim 1 recites, for instance, in combination with all the elements of the claim, a system which includes an instrumentation collector which collects instrumentation of software components. The system further includes an instrumentation analyzer which analyzes instrumentation of software components, maps instrumentation to states of operation, and groups instrumentation into groups representing the same transition from one state of operation to another state of operation.

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<sup>1</sup> Although the prior art status of the cited art is not being challenged at this time, Applicants reserve the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

<sup>2</sup> However, it should be noted that the present invention and claims as recited take support from the entire Specification. As such, no particular part of the Specification should be considered separately from the entirety of the Specification.

Finally, the system includes a health model generator which creates a health model for a software component using the states of operation and the groups of mapped instrumentation.

Claim 10 recites a corresponding a method for building a health model of a software component which is similar to the system as recited in claim 1. The method of claim 10 includes creating an inventory of instrumentation of a software component. The inventory of instrumentation is mapped to states of operation and is analyzed to identify groups of instrumentation which result in the same transition from one state of operation to another state. A health model is then generated using the states of operation of the software component and at least one transition representing a group of instrumentation from one state of operation to another.

Claims 1–36 and 41–42 were all rejected under 35 U.S.C. § 112 for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Independent claims 1 and 10 have been amended in due course and such amendments have, *inter alia*, cured the indefiniteness issues raised by the Examiner. The amendments also address the concerns raised by the Examiner with regard to the “two steps of grouping”.<sup>3</sup> The Applicants submit that, in view of the current amendments, the confusion with regard to the grouping has been cured.

There was also some apparent confusion in the last rejection regarding the terms “identified instrumentation” and “mapped instrumentation” and whether they correspond to distinct sets. To clarify, Applicants note that the “mapping” of claims 1 and 10 creates a map between instrumentation and states of operation of a software component. The “identifying” of claim 10 identifies groups of instrumentation which result in the same transition from one state to another. In other words, instrumentation is mapped to states of operation and then groups of instrumentation are identified which cause the same transitions from one state to another.

With regard to the substantive rejections, it is noted that independent claims 1 and 10 were rejected under 35 U.S.C. § 102(e) as being anticipated by Lovy et al., U.S. Patent No. 7,028,228 (filed Mar. 28, 2002). The Applicants submit, however, that Lovy fails to teach each and every element of the invention as now recited in claims 1 and 10. Specifically, Lovy fails to teach, among other things, an instrumentation analyzer which analyzes instrumentation and maps

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<sup>3</sup> Office Communication pp. 3–4 (Feb 20, 2007).

instrumentation to states of operation. Lovy also fails to teach analyzing instrumentation to determine which instrumentation results in the same transition from one state of operation to another state or an instrumentation analyzer which groups instrumentation which results in the same transition of one state of operation of a software component to another state of operation. With regard to these claim elements, the Examiner referenced Lovy fig. 4 and col. 15 l. 36 to col. 16 l. 51 for teaching grouping.<sup>4</sup> However, the Applicants submit that the cited portion of Lovy (as well as its entirety) fails to teach any such analysis of instrumentation or any such grouping of instrumentation into groups which represent the same transition from one state of a software component to another state, as claimed.

Lovy also fails to teach a health model generator which creates a health model using the states of operation and the groups of mapped instrumentation. The Examiner did cite to Lovy col. 13 l. 21 – col. 14 l. 47 for teaching a health model generator.<sup>5</sup> However, the “Case Management System” disclosed in the cited portion of Lovy teaches that the “Case Management System generates service cases (or trouble tickets)”<sup>6</sup> but this cited disclosure (as well as the entirety of Lovy) fails to teach that a health model is created and further fails to teach that the health model is created using the states of operation of the software component and the groups of mapped instrumentation.

Because Lovy fails to teach each and every element of the invention as claimed in independent claims 1 and 10, the Applicants respectfully submit that a rejection under 35 U.S.C. § 102(e) would be improper and should be withdrawn. Applicants, accordingly, respectfully request the Examiner to withdraw the rejections. Applicants further submit that the invention as now claimed is in condition for allowance and respectfully request the Examiner to issue the allowance of all claims.

In view of the foregoing, Applicants respectfully submit that all other rejections to the dependent claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicants acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicants reserve the

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<sup>4</sup> Office Comm. pp. 6–8.

<sup>5</sup> Office Comm. pp. 5 & 8.


<sup>6</sup> Lovy col. 13 l. 32–33.

right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicants specifically request that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this 20<sup>th</sup> day of April, 2007.

Respectfully submitted,



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